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8 Attorney for Defendant Josef F. Boehm

9 IN THE UNITED STATES DISTRICT COURT

10 DISTRICT OF ALASKA

11
12 Sally C. Purser,)
13 Plaintiff,) POINTS AND AUTHORITIES TO FILE
14 v.) THIRD PARTY COMPLAINTS
15 Josef F. Boehm, Allen K.)
Bolling, and Bambi Tyree,)
16 Defendants.)
17)
18) CASE NO.: A05-0085 (JKS)
19)

20 I. INTRODUCTION

21 a. Timing of motion to file third party complaints

22 Boehm has recently obtained discovery that necessitates filing
23 third party complaints. Third party complaints would have been
24 filed earlier, however, it has been an overwhelming and difficult
25 task locating witnesses, documents and other relevant information.
26 All of these difficulties have been compounded by the lack of
27 cooperation thus far by Purser's counsel.
28

1 In addition, predecessor counsel did very little by way of
2 discovery and motion practice leaving the Kenner Law Firm in a very
3 difficult and time sensitive position. Discovery thus far continues
4 to shed new light on the facts and circumstances surrounding the
5 claims against Boehm and continues to reveal individuals who
6 contradict each and every claim made by Purser. **Discovery**
7 **continues to reveal that others are responsible for Purser's**
8 **alleged damages.**

9 Many of the events in Salley Purser's life are unknown and she
10 continues to attempt to keep those events undiscovered in hopes
11 that she can claim that Boehm is the sole cause of her damages.
12 From the limited amount of discovery obtained by counsel, it is
13 clear that Salley Purser has been abused sexually, mentally, and
14 physically by parents, uncles, friends, cocaine dealers, pimps and
15 many others. However, those people have **never** been sued by Salley
16 Purser and remain outside of this case. The reasons that litigious
17 Salley Purser decided not to sue those people is clear and does not
18 require explanation.

19 Still missing from discovery are the myriad of individuals for
20 whom Purser smoked "crack" cocaine with, obtained "crack" cocaine
21 from, traded sex for money and drugs with as well as a detailed
22 account of her involvement in several scams to defraud men of their
23 money and property with co-conspirator Bambi Tyree.

24 The magnitude and complexity of this case is growing at an
25 extreme pace and further third party complaints will be necessary
26 as others are found to be responsible for Purser's alleged damages.
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1 **B. Acquired discovery shows that other parties are**
2 **responsible for Salley Purser's alleged damages, and**
3 **it is appropriate for Boehm to file third party**
4 **complaints against them.**

5 It is necessary for Boehm to file third party complaints
6 against Bambi Tyree, Kathleen Purser, Al Bolling, Leslie Williams,
7 Jay Whaley, estate of Carl Bucher, Jay Harrison, Roberta Harrison,
8 Deborah Axt, Salley Purser's Boyfriends and all possible defendants
9 not yet known but referenced as "Doe 1-50." The proposed complaint
10 is attached and marked Exhibit A.

11 Facts presented by sworn testimony, third party affidavits,
12 interviews and written discovery support Boehm filing third party
13 complaints. The undisputed facts are broken down by person:

14 **i. Bambi Tyree**

15 Salley Purser obtained "crack" cocaine from and smoked crack
16 with Bambi Tyree. See *Purser Deposition (attached as Exhibit B)*.

17 Salley Purser admits to theft of money and automobiles from
18 numerous individuals including Boehm. Said actions were committed
19 with Bambi Tyree and others. See *Purser Deposition (attached as*
20 *Exhibit B)*;

21 Purser identifies a conspiracy by and between Tyree, Bolling
22 and Williams to keep Boehm high on "crack" cocaine and steal from
23 him. Purser further stated that Tyree tried to harm Boehm by
24 tainting his food and drugs in an effort to keep him incoherent and
25 within her control. Purser referred to Tyree as the "ring leader".
26 *Purser Interview with Private Investigator June 4, 2004, Page 4.*
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1 The purser Interview is attached and Marked Exhibit C.

2 **ii. Salley Purser's Father**

3 Purser witnessed violence within her family, specifically her
4 father beating her mother and choking her. *Dr. Rose report, page 1.*
5 The Dr. Rose report is attached and marked Exhibit D.

6 **iii. Kathleen Purser**

7
8 Purser was left at home alone at a young age. She drank beer
9 with her mother who eventually became addicted to cocaine. *Dr. Rose*
10 *Report, page 2* (Attached as Exhibit D).

11 Purser was physically assaulted by her mother who one time
12 almost "snapped her back". *Dr. Rose report, page 2* (Attached as
13 Exhibit D).

14 Purser's mother "blackmailed her daily to get drugs". *Dr. Rose*
15 *Report, page 3* (Attached as Exhibit D).

16 Salley Purser obtained "crack" cocaine and smoked crack with
17 Kathleen Purser. See *Purser Deposition (attached as Exhibit B)*.

18 Salley Purser traded sex for "crack" cocaine with numerous
19 individuals, including older men and drug dealers. In addition,
20 Purser's mother sold her to older men and drug dealers in exchange
21 for "crack" cocaine. Said acts occurred before, during and after
22 the time period encompassing her claims against Boehm. See *Purser*
23 *Deposition (attached as Exhibit B)*;
24

25 **iv. Al Bolling**

1 Salley Purser obtained "crack" cocaine from Al Bolling and was
2 forcibly raped by Al Bollling. See *Purser Deposition*, page 86
3 (*attached as Exhibit B*).

4 **v. Leslie Williams**

5 Salley Purser obtained "crack" cocaine from Leslie Williams.
6 Salley Purser had sex with Leslie Williams while she was under age.
7 See *Purser Deposition*, page 96 (*attached as Exhibit B*).

8 **vi. Jay Whaley**

9
10 Salley Purser, 16 years old, lived with Jay Whaley, an older
11 man, convicted drug dealer and escort service operator who paid for
12 her living expenses and provided her an unlimited source of "crack"
13 cocaine in exchange for sex during the time period encompassing her
14 claims against Boehm. Purser was a minor during this period and
15 was arrested with Whaley for possession of crack cocaine. See
16 *Purser Deposition*, page 36 (*attached as Exhibit B*);

17 **vii. Carl Bucher**

18 **Salley Purser obtained "crack" cocaine from and smoked crack**
19 with Carl Bucher. Carl Bucher was the first person that Salley
20 Purser exchanged drugs for sex. She has also made statements in
21 the past that she was sold to Carl Bucher in exchange for money by
22 her mother. See *Purser Deposition*, page 22 (*attached as Exhibit*
23 *B*).

24
25 **viii. Jay Harrison and Roberta Harrison**
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Purser's uncle sexually abused her, made her go topless, took nude pictures of her and attempted to massage her on several occasions.¹ *Dr. Rose Report, page 2* (Attached as Exhibit D).

ix. Purser's Boyfriends

Purser admits to becoming addicted to cocaine after a three month relationship with her boyfriend. When she took her first crack hit she had an "outer space feeling" and felt like "I could not get enough".² *Dr. Rose Report, page 5* (Attached as Exhibit D).

Purser was abused by several boyfriends and drug dealers. *Dr. Rose Report, page 6* (Attached as Exhibit D).

x. Deborah Axt

Deborah Axt admitted that she knew that Salley Purser was using crack and still allowed her to hang out at her house alone providing a place where she can get high. *See Interview of Deborah Axt, Page 24* (Attached as Exhibit E).

II. ARGUMENT

A. Authority for motion to file third party complaints.

¹ Purser denied any sexual misconduct by her uncle in her deposition and went on to deny telling this to Dr. Rose raising yet another instance of Purser's flawed credibility. Purser went on to testify that the allegations made against her uncle were false because she felt he was "strict". Purser has now taken three different positions with regard to her uncle's alleged behavior lending further credence to the likelihood that her claims against Boehm are false and for the purpose of obtaining undeserved monetary benefit.

² Purser has repeatedly alleged that Boehm got her addicted to "crack". Boehm has repeatedly denied this contention. Purser's statements to Dr. Rose indicate an immediate need for "crack" cocaine after her first experience. Purser also indicates an addiction as a result of a break up with her boyfriend. Finally, Purser testified to living with boyfriend Jay Whaley while she was 16 years old. Purser went on to testify that he provided her "crack" cocaine and was a known drug dealer and escort service operator. Purser's addictions have nothing to do with Boehm

1 FRCP 14 states that "At any time after the commencement of the
2 action a (defendant) . . . may cause a summons and complaint to be
3 served upon a person not a party to the action who is or may be
4 liable to the (defendant) . . . for all or part of the plaintiff's
5 claim against the (defendant)." FRCP 14(a)(emphasis added).

6 The purpose of impleader is to promote judicial efficiency by
7 eliminating the need for defendant to bring a separate action
8 against parties secondarily or derivatively liable to the defendant
9 on account of plaintiff's claim. *Southwest Admin., Inc. V. Rozay's*
10 *Transfer*, 791 F.2d 769, 777 (9th Cir. 1986); *Lehman v. Revolution*
11 *Portfolio L.L.C.*, 166 F.3d 389, 394 (1st Cir. 1999).

12 Since the rule is designed to reduce multiplicity of
13 litigation, it is construed liberally in favor of allowing
14 impleader. *Id.* at 393 (emphasis mine). Further, the district
15 court "should allow impleader on any colorable claim of derivative
16 liability that will not unduly delay or otherwise prejudice the
17 ongoing proceedings." *FDIC v. Loube*, 134 FRD 270, 272 (ND CA
18 1991).

19 A third-party defendant need not be directly liable to the
20 original plaintiff. The original defendant may recover judgment on
21 an impleader claim even if the third-party defendant bears no
22 direct liability to the original plaintiff. *Huggins v. Graves*, 337
23 F.2d 486, 489 (6th Cir. 1964); *Irwin v. Mascott*, 94 F.Supp.2d 1052,
24 1056-1057 (ND CA 2000).

25 It need not be shown that the third party defendant is
26 automatically liable if the defendant loses the underlying lawsuit.
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1 It is sufficient if there is some possible scenario under which the
 2 third party defendant may be liable for some or all of the
 3 defendant's liability to the plaintiff. (emphasis mine) *Andrulonis*
 4 *v. United States*, 26 F3d 1224, 1223 (2nd Cir. 1994); *Banks v. City*
 5 *of Emeryville*, 109 FRD 535, 540 (ND CA 1985).

6 Here, it is clear that Bambi Tyree, Kathleen Purser, Al
 7 Bolling, Leslie Williams, Jay Whaley, Carl Bucher, Kathleen
 8 Purser's various drug connections and numerous other individuals
 9 before, during and after the time period encompassing the alleged
 10 actions of Boehm were responsible damages caused to Salley Purser.
 11 Thus, these third parties may be liable for some or all of
 12 Plaintiff Purser's alleged damages and should be brought into this
 13 suit.

14 **B. Any delay in filing the third party complaints will not**
 15 **severely prejudice Purser.**

16 In *Charlotte Motor Speed Way*, a motion to file a third-party
 17 complaint was properly granted by magistrate, despite 19-month
 18 delay and allegation of prejudice by plaintiff; defendant offered
 19 plausible explanation for delay in its contention that newly
 20 emerging evidence obtained through discovery formed basis of third-
 21 party complaint; scope of discovery would not be significantly
 22 increased as additional parties had been or likely would have been
 23 deposed anyway; finally, interest of judicial economy required that
 24 third-party complaint could be allowed in order to avoid a
 25 duplicative second action. *Charlotte Motor Speedway, Inc. V.*
 26 *International Ins. Co.*, 125 F.R.D. 127 (M.D.N.C. 1989).
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1 Further, the court in *McSparran* held that a motion of a
2 defendant for leave to file third-party complaint about 26 months
3 after service of his answer in action involving collision of three
4 automobiles would be granted, **where no significant prejudice or**
5 **evil resulted from delay, and filing of third-party complaint would**
6 **be in interest of justice and would serve expeditious operation of**
7 **court.** *McSparran v. Gable*, 223 F.Supp. 127 (E.D.Pa. 1963).

8 Here there will be no significant prejudice or evil resulting
9 from delay and filing of third-party complaint would be in interest
10 of justice and would serve expeditious operation of this court.

11 **III. CONCLUSION**

12 Defendant Boehm respectfully requests leave to file third
13 party complaints against Bambi Tyree, Kathleen Purser, Al Bolling,
14 Leslie Williams, Jay Whaley, estate of Carl Bucher, Jay Harrison,
15 Roberta Harrison, Deborah Axt, Salley Purser's Boyfriends and all
16 possible defendants not yet known but referenced as "Doe 1-50."

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20 DATED this 20th day of April, 2007 at Encino, California.

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